First Nations Water Rights in British Columbia

A Historical Summary of the rights of the Tsawataineuk First Nation

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MINISTRY OF ENVIRONMENT, LANDS and PARKS
WATER MANAGEMENT BRANCH

FIRST NATIONS WATER RIGHTS IN BRITISH COLUMBIA:

A Historical Summary of the rights of the Tsawataineuk First Nation

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Gary Robinson
Project Manager
Water Management Branch

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FIRST NATIONS WATER RIGHTS REPORT

BAND: Tsawataineuk

ADDRESS: Kingcome Inlet, Kingcome Village, B.C., V0N 2B0

CHIEF: David A. Dawson

PHONE: Kingcome Operator 5255 **FAX:** Line 5207

AFFILIATION: Musgamagw Tsawataineuk Tribal Council

LOCATION:

The Tsawataineuk Band occupies five reserves on the west coast of British Columbia near Kingcome Inlet, across from Northern Vancouver Island.

These reserves are:

Bat-l-ki 3	Charles Creek 2	Kawages 4
Kukwapa 5	Quaee 7	

The only reserve with a record of water allocations is Quaee 7. This 174.7-hectare reserve is located along the Kingcome River, north of Kingcome Inlet.

Located on the southwest coast of British Columbia, these reserves sit at elevations ranging from sea level to 500 feet above sea level, and experience a climate ranging from an average daily temperature of 0 to 5 degrees centigrade in January to 16 degrees centigrade in July. The average annual rainfall for this area is 100 to 250 centimetres.

The most recent population figures from the Ministry of Finance show the Tsawataineuk Band to have a population of 109 persons living on-reserve as registered members. It's total population, including registered and non-registered members living on-reserve, on crown land and off-reserve is 448.

Water courses of significance include:

- ¥ North Quaee Creek, which flows southwest, through the southeastern corner of Quaee 7, and drains into Quaee Creek.
- ¥ Quaee Creek, which is located south of Quaee 7, flows west and drains into Kingcome River.

¥ Vogel Creek is located west of Quaee 7 and flows east and drains into Kingcome River.

WATER ALLOCATIONS:

There is no record of any water allocations made by the Reserve Commission with respect to the Tsawataineuk Band. Similarly, there is no record of any allocations by an Order in Council of the Lieutenant Governor in Council, nor any orders of the Board of Investigation.

However, water rights of the Tsawataineuk Band have been recorded or affected by two actions of government over the years:

1) Granting of water licences from Federal Government application for licences for the use of water on reserves.

2) Actions to amend rights under licences pursuant to provisions in the *Water Act.*

HISTORY, CURRENT STATUS, AND NOTES:

The history of water rights, the current status of rights and notes for the Tsawataineuk Band with respect North Quaee Creek, Quaee Creek and Vogel Creek are as follows:

QUAEE #7

North Quaee and Quaee Creeks

History:

Apr 15, 1972 The Comptroller of Water Rights issued Conditional Water Licence 38942 to the Director of Indian Affairs in accordance with an application filed by the same office. This licence was given a date of precedence of November 15, 1971 and authorized the diversion of 10,000 gallons of water a day from Quaee Creek for waterworks purpose on Indian Reserve No. 7, Quaee, Range 1, Coast District.

Jan 20, 1986 In accordance with a letter from Indian and Northern Affairs, the Deputy Comptroller of Water Rights recorded Conditional Water Licence 38942 as abandoned. Indian and Northern Affairs abandoned Conditional Water Licence 38942 so that a new licence could be issued which would authorize a greater quantity of water.

Feb 21, 1986 The Regional Water Manager issued Conditional Water Licence 61456 to Indian and Northern Affairs in accordance with an application filed by the same office. This licence bears a date of precedence of January 11, 1985, and authorizes the diversion of 7,670,000 gallons of water a year from Quaee Creek and North Quaee Creek for waterworks purpose on Indian

Reserve No. 7, Range 1, Coast District.

Current Status:

Conditional Water Licence 61456, in the name of the Tsawataineuk Band is the only active licence on North Quaee and Quaee Creeks. There is no recent information on file with respect to the current exercise of rights under this licence.

The North Quaee and Quaee Creek drainage area has been designated as a Community Watershed under the Forest Practices Code.

Water Survey of Canada has no streamflow records for North Quaee or Quaee Creek. However, the Engineer's report for Conditional Water Licence 61456 estimated the average annual flow on Quaee Creek as 4.8 cubic feet per second.

Notes:

1. There is no additional information with respect to the water rights of the Tsawataineuk Band on North Quaee and Quaee Creeks.

Vogel Creek

History:

Sept 13, 1979 The Deputy Comptroller of Water Rights issued Conditional Water Licence 52835 to the Minister of Indian and Northern Affairs in accordance with an application filed by the same office. This licence bears a date of precedence of March 23, 1979, and authorizes the diversion of 3.53 cubic feet of water a second from Vogel Creek for power purpose on Quaee 7. The licence is appurtenant to a powerhouse site situated on Lot 1952, Range 1, Coast District.

Current Status:

Conditional Water Licence 52835, in the name of the Tsawataineuk Band, is the only active licence on Vogel Creek.

Information on file indicates logging in 1986 affected the hydro-electric plant of the Tsawataineuk Band and fish stocks in Vogel Creek. It is not known if logging is still taking place near Vogel Creek and there is no recent information on file with respect to the current exercise of rights under this licence.

Water Survey of Canada has no streamflow records for Vogel Creek and there is no flow information on our files.

Notes:

1. There is no additional information with respect to the water rights of the Tsawataineuk Band on Vogel Creek.

OTHER INFORMATION:

Alternate Water Sources

i) Groundwater Records:

Review of records of the Groundwater Section finds no evidence of any wells on the Tsawataineuk Reserves. However, as provision of this information is voluntary, it can not be assumed to be complete.

ii) Municipal Water Sources:

At this time the potential for water supply from a municipality is limited, as there are no municipal water systems in the proximity of the Tsawataineuk Reserves.

Summary of Water Rights Records

Tsawataineuk First Nation

Water Source	Priority Date	Reserve Name	File Number	Document Type	Status	Superceded By	Licence PUC/MOD & OIC Allotments	Comments
North Quaee Creek Quaee Creek	1985/01/11	Quaee #7	1000429	C 61456	Current		7,670,000 GY/Waterworks	There is no additional information with respect to the Tsawataineuk Band on North Quaee and Quaee Creeks.
Quaee Creek	1971/11/15	Quaee #7	0309271	C 38942	Abandoned		10,000 GD/Waterworks	
Vogel Creek	1979/03/23	Quaee #7	0365349	C 52835	Current		3.53 CFS/Power	There is no additional information with respect to the Tsawataineuk Band on Vogel Creek.

WATER RESOURCES SERVICE
WATER RIGHTS BRANCH

DEPARTMENT OF LANDS, FORESTS, AND WATER RESOURCES

THE PROVINCE OF BRITISH COLUMBIA—WATER ACT

CONDITIONAL WATER LICENCE

Superintendent General of Indian Affairs (Fraser District) of OTTAWA, Ontario

is/are hereby authorized to divert and use water as follows:—

(*a*) The source(s) of the water-supply is/are Quaee Creek.

(*b*) The point(s) of diversion is/are located as shown on the attached plan.

(*c*) The date from which this licence shall have precedence is 15th November, 1971.

(*d*) The purpose for which the water is to be used is waterworks.

(*e*) The maximum quantity of water which may be diverted is 10,000 gallons a day, and such additional quantity as the Engineer may from time to time determine should be allowed for losses.

(*f*) The period of the year during which the water may be used is the whole year.

(*g*) The land upon which the water is to be used and to which this licence is appurtenant is Indian Reserve No.7, Quaee, Range 1, Coast District.

(*h*) The works authorized to be constructed are diversion structure and pipe, which shall be located approximately as shown on the attached plan.

(*i*) The construction of the said works has been commenced, and shall be completed and the water beneficially used on or before the 31st day of December, 1974.

H. D. DeBeck,
Comptroller of Water Rights.

File No. 0309271 Date issued: 15 April, 1972 Conditional Licence No. 38942

ABANDONED
1-80

ENTERED ON
Map No. 92 I/NE (F-5)
By

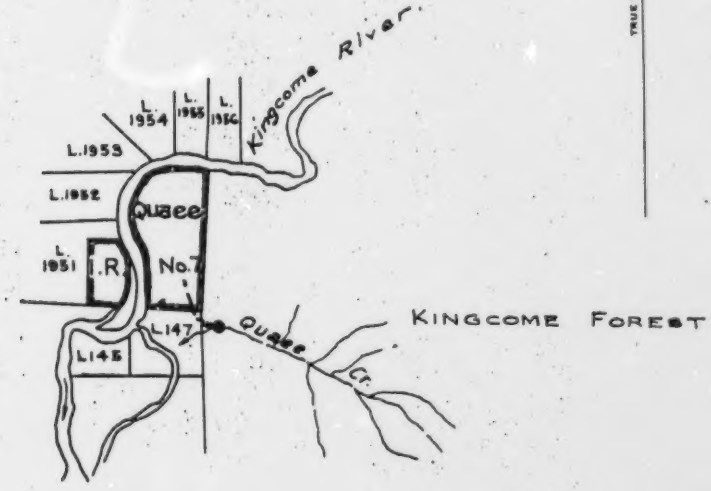
British Columbia

NANAIMO.

VANCOUVER WATER DISTRICT

~~I. N. R. M.~~ COAST DISTRICT

Scale: 80 chains to 1 Inch



LEGEND

Point of Diversion ●

I.R. Map 92 L/NE(E-S)

Pipe

Right-of-way ▪▪▪▪

The boundaries of the land to which this licence is appurtenant are shown thus: ▬▬▬

6 prints.

EXHIBIT "A"

Signature

Date 15th Apr. 1972

C.L. 38942

File 0309271

R/W Permit No. 8613

COAST PRECINCT

PROVINCE OF
BRITISH COLUMBIA

DEPARTMENT OF LANDS, FORESTS,
AND WATER RESOURCES

PERMIT UNDER THE WATER ACT AUTHORIZING THE OCCUPATION OF CROWN LAND

Superintendent General of Indian Affairs
(Fraser District) of OTTAWA, Ontario

the holder(s) of Conditional ~~Absolute~~ Water Licence(s) 38942 authorizing the diversion of water from Quaee Creek is/are hereby

authorized to occupy Crown land by constructing, maintaining, and operating thereon the works authorized under the said water licence and any licences which may be issued in substitution thereof.

(*a*) The Crown land which is authorized to be occupied under this permit is a portion of
Unsurveyed land, Range 1, Coast District,

the location of which is shown approximately on the plan attached to the said water licence.

(*b*) The approximate dimensions of the Crown land authorized to be occupied under this permit are
660 feet in length and 15 feet in width, having an area of 0.22 acre.

(*c*) Subject to the payment of royalty, stumpage, and other compensation, and the obtaining of a licence to cut timber as provided under Condition 5, the permittee may cut and remove from the said land any timber, the removal of which is necessary to permit construction and maintenance of the said works.

(*d*) The annual rental for this permit is $ 2.00 , which is subject to review and revision at any time at the discretion of the Crown.

(*e*) This permit is appurtenant to the land, mine, or undertaking to which the aforesaid water licence is appurtenant.

(*f*) The conditions relative to the rights granted under this permit are printed on the back of this form.

Deputy Minister of Lands

File No. 0309271

Ref. Map 92 L/NE (F-5)

W.R. Map -------

Date issued: 15 April 1972 Permit No. 8513

W.R.B. 12A--2M-371-1983

ABANDONED

LAND AND WATER MANAGEMENT
WATER RIGHTS BRANCH

MINISTRY OF THE ENVIRONMENT

THE PROVINCE OF BRITISH COLUMBIA—WATER ACT

CONDITIONAL WATER LICENCE

The Honourable Minister of Indian and Northern Affairs of Ottawa, Ontario

is/are hereby authorized to divert and use water as follows:—

(*a*) The source(s) of the water-supply is/are Vogel Creek.

(*b*) The point(s) of diversion is/are located as shown on the attached plan.

(*c*) The date from which this licence shall have precedence is 23rd March, 1979.

(*d*) The purpose for which the water is to be used is power.

(*e*) The maximum quantity of water which may be diverted is 3.53 cubic feet per second and such additional quantity as the Engineer may from time to time determine should be allowed for losses.

(*f*) The period of the year during which the water may be used is the whole year.

(*g*) [redacted]
This licence is appurtenant to a powerhouse site situated on Lot 1952, Range 1, Coast District.

(*h*) The works authorized to be constructed are diversion structure, penstock, pipe, powerhouse, tailrace and transmission line which shall be located approximately as shown on the attached plan.

(*i*) The construction of the said works shall be commenced on or before the 13th day of March, 1980, and shall be completed and the water beneficially used on or before the 31st day of December, 1983.

(j) The rights granted under this licence may be deemed to be subsequent to any rights granted under any licence or licences that may be issued at any time for the consumptive use of water.

(k) The water used in the generation of power shall be returned to the stream immediately after use.

J. E. Farrell,
Deputy *Comptroller of Water Rights.*

File No. 0365349 Date issued: 13th September, 1979 Conditional Licence No. 52835

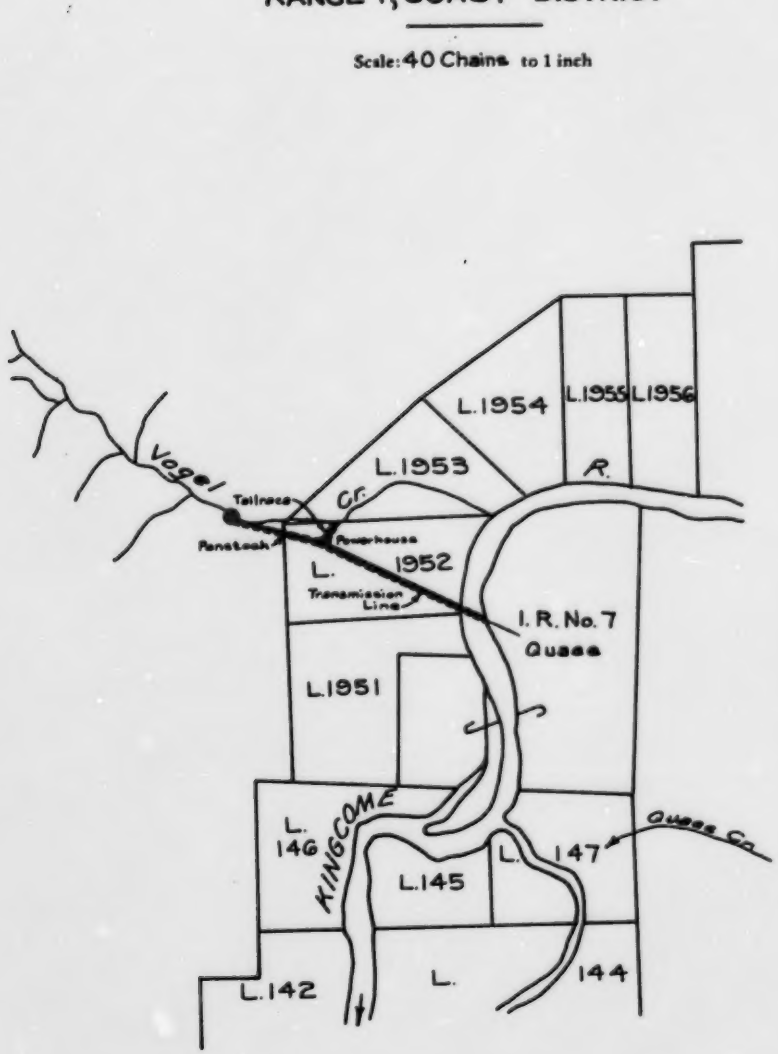
ENTERED ON
Map No. 92 L/NE (16-9)
By

British Columbia

NANAIMO WATER DISTRICT

RANGE 1, COAST DISTRICT

Scale: 40 Chains to 1 inch



LEGEND

Point of Diversion ●
Ref. Map 92 L/NE (16 g)
Pipe
Right of Way

Signature: Joel E. Lovell

Date 13 Sept. 1979

CL 52835
File 0365349
R/W Permit No. 12133

Coast Precinct

Province of
British Columbia

Ministry of the
Environment

PERMIT UNDER THE WATER ACT AUTHORIZING THE OCCUPATION OF CROWN LAND

The Honourable Minister of Indian and Northern Affairs of Ottawa, Ontario

the holder(s) of Conditional/~~Final~~ Water Licence(s) 52835 authorizing
the diversion of water from Vogel Creek

is/are hereby

authorized to occupy Crown land by constructing, maintaining, and operating thereon the works authorized under the said water licence and any licences which may be issued in substitution thereof.

(*a*) The Crown land which is authorized to be occupied under this permit is a portion of unsurveyed land, Lot 1952, and unsurveyed foreshore and land within Range 1 Coast District covered by waters of Kingcome River,

the location of which is shown approximately on the plan attached to the said water licence.

(*b*) The approximate dimensions of the Crown land authorized to be occupied under this permit are

(1) powerhouse site ----------	1 acre
(2) 5,500 feet by 15 feet ----------	1.89 acres
total area	2.89 acres

(*c*) Subject to the payment of royalty, stumpage, and other compensation, and the obtaining of a licence to cut timber as provided under Condition 5, the permittee may cut and remove from the said land any timber, the removal of which is necessary to permit construction and maintenance of the said works.

(*d*) The annual rental for this permit is $ 12.00 , which is subject to review and revision at any time at the discretion of the Crown.

(*e*) This permit is appurtenant to the land, mine, or undertaking to which the aforesaid water licence is appurtenant.

(*f*) The conditions relative to the rights granted under this permit are printed on the back of this form.

Deputy Minister of Environment

File No. 0365349

Ref. Map 92 L/NE (16g)

W. R. Map ----------

Date issued: 13th September, 1979 Permit No. 12133

W.R.B. 12

WATER MANAGEMENT BRANCH

MINISTRY OF ENVIRONMENT

THE PROVINCE OF BRITISH COLUMBIA—WATER ACT

CONDITIONAL WATER LICENCE

Indian and Northern Affairs, Canada of PO Box 1000, 800 Burrard Street, Vancouver, British Columbia V6Z 2J3

is hereby authorized to divert and use water as follows:

(a) The sources of the water-supply are Quaee Creek and North Quaee Creek.

(b) The points of diversion are located as shown on the attached plan.

(c) The date from which this licence shall have precedence is 11th January, 1985.

(d) The purpose for which this licence is issued is waterworks.

(e) The maximum quantity of water which may be diverted is 7,670,000 gallons per year at a rate not exceeding 42,000 gallons per day.

(f) The period of the year during which the water may be used is the whole year.

(g) The land upon which the water is to be used and to which this licence is appurtenant is Indian Reserve No. 7, Range 1, Coast District.

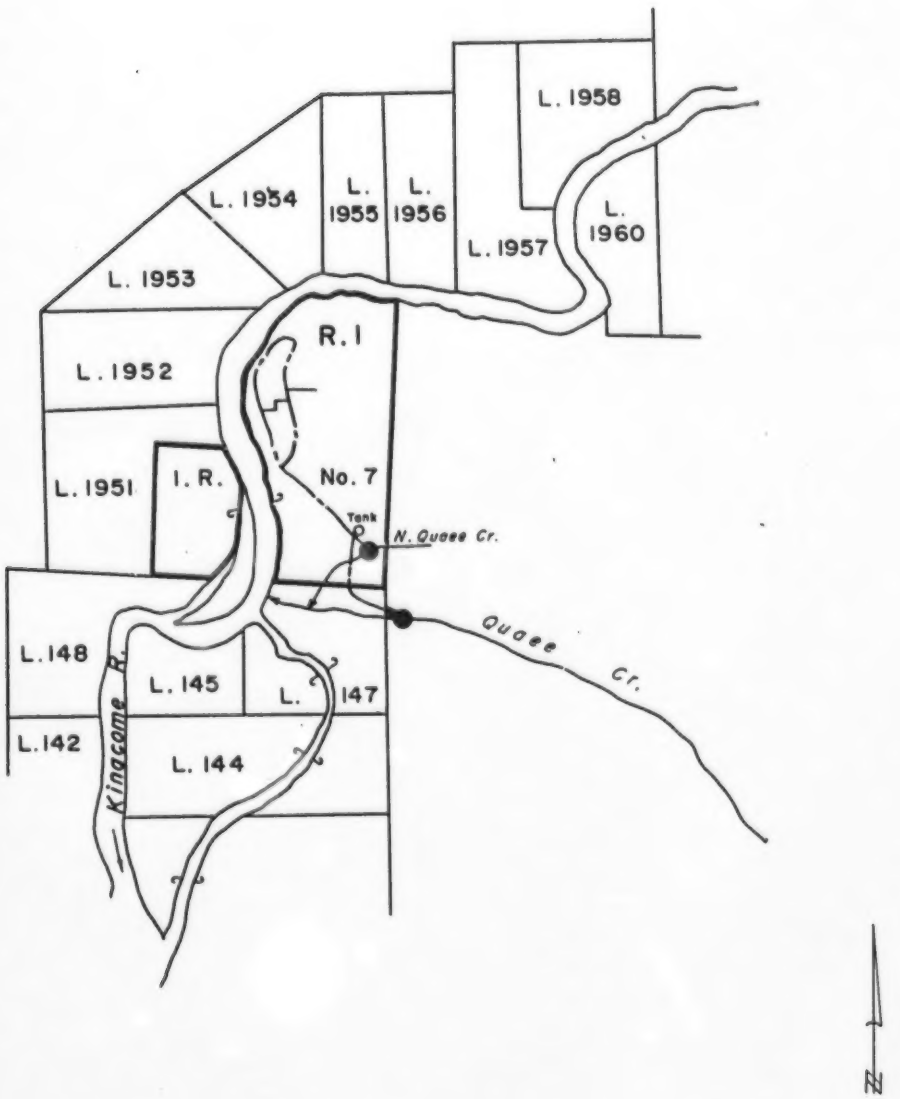
(h) The works authorized to be constructed are diversion structure, tank, pipe and distribution system, which shall be located approximately as shown on the attached plan.

(i) The construction of the said works shall be completed and the water beneficially used on or before the 31st day of December, 1988.

B. Hollingshead
Regional Water Manager

File No. 1000429 Date issued: 21st February, 1986 Conditional Licence 61456

Province of British Columbia



WATER DISTRICT : NANAIMO
PRECINCT : COAST
LAND DISTRICT : COAST

LEGEND

Scale : ½ Mile to 1 Inch
Point of Diversion : ●
Map Number : WR 92 L/NE (16g)
Pipe : — - —
Permit over Crown Land: ▬▬▬

The boundaries of the land to which this licence is appurtenant are shown thus: ▬▬▬

Signature B. Sallybrand

Date February 21, 1986

C.L. 61456
File 1000429
P.C.L. 14747

Province of British Columbia

Ministry of Environment

PERMIT UNDER THE WATER ACT AUTHORIZING THE OCCUPATION OF CROWN LAND

The holder of Conditional Water Licence 61456, being Indian and Northern Affairs, Canada at the date of issue of the said licence, whose licence authorizes the diversion of water from Quaee Creek and North Quaee Creek, is hereby authorized to occupy Crown Land by constructing, maintaining and operating thereon the works authorized under the said licence and any licences which may be issued in substitution thereof.

(a) The Crown Land which is authorized to be occupied under this permit is a portion of unsurveyed Crown Land, Range 1, Coast District, the location of which is shown approximately on the plan attached to the said water licence.

(b) The approximate dimensions of the Crown Land authorized to be occupied under this permit are: pipe 15' x 140' = .05 acres located as shown on the plan attached to the licences.

(c) The permittee may cut and remove from the said Crown Land any timber necessary to permit construction and maintenance of the said works. Prior to the cutting, destruction or flooding of any timber, the permittee shall apply for and obtain a licence to cut timber from the District Forester and the amount of stumpage, royalty and (or) compensation payable to the Crown in respect of trees, including merchantable or young growth, cut, removed, damaged, or destroyed by the permittee, shall be the sum or sums fixed by the Forest Service of the Province of British Columbia.

(d) This permit is appurtenant to the land, mine or undertaking to which the aforesaid water licences are appurtenant.

(e) This permit shall become void if the water licences with respect to which the permit is issued should terminate, be abandoned or cancelled, or amended so as to render this permit unnecessary.

(f) This permit is issued and accepted on the understanding that the permittee shall indemnify and save harmless the Government of the Province of British Columbia for all loss, damage to works, cost or expense suffered by the permittee by reason of the Crown Land or any portion thereof being submerged or damaged by erosion or otherwise affected by flooding.

(g) The holder of this permit shall not be entitled to compensation if the Crown grants permits to other persons to occupy the land affected by this permit.

(h) In the event of a dispute at any time with respect to the area or boundaries of the land affected by this permit, the holder shall, at his own expense, have the said land surveyed by a duly qualified surveyor.

(i) The annual rental for this permit is $4.00, which is subject to review and revision at any time at the discretion of the Crown.

B. E. Marr
Deputy Minister of Environment

File No. 1000429 Date Issued: February 21, 1986 Permit No. 14747

Stream Register Report Water Licence Information System

Report Requested By : DJOLLY
Date Report Requested : 1996/07/22 11:09
Report Sorted By : Source Gazetted - Priority Date - Licence Number
Selection Criteria
START POINT : PD31493 - 92L/NE(16-g) B
END POINT : SO494 - North Quaee Creek right of Quaee Creek

Priority YYYY/MM/DD	Licence Number	File Number	Appurtenancy	Licensee	PUC	Quantity/Units	Term Start	Term End	Licence Comments	Process Status
1985/01/11	C061456	1000429	IR #7 QUAEE R 1 COAST DIST	TSAWATAINEUK INDIAN BAND 978-636-7102 GD KINGCOME INLET BC V0N2B0	WWKOT	21,014.00 GD	Jan 01	Dec 31		

Source	WR Map	POD	RED POD	Comments	Prec
North Quaee Creek	WR92L/NE(16-g)	N	N		17D NAN - COAST
Quaee Creek	WR92L/NE(16-g)	A	N		

---------- Total of 1 Licence Reported ----------

Stream Register Report Water Licence Information System

Report Requested By : DJOLLY
Date Report Requested : 1996/07/22 11:07
Report Sorted By : Source Gazetted - Priority Date - Licence Number
Selection Criteria
START POINT : FD31492 - 92L/NE(16-g) A
END POINT : SO492 - Quaee Creek left of Kingcome River

Priority YYYY/MM/DD	Licence File Number	Appurtenancy Number	Licensee	PUC	Quantity/Units	Term Start	Term End	Licence Comments	Process Status
1985/01/11	C061456	1000429	IR #7 QUAEE R 1 COAST DIST	TSAWATAINEUK INDIAN BAND 978-636-7102 GD KINGCOME INLET BC V0N2B0	WWKOT	21,014.00 GD	Jan 01	Dec 31	

Source	WR Map	POD	RED POD	Comments	Prec
Quaee Creek	WR92L/NE(16-g)	A	N		17D NAN - COAST
North Quaee Creek	WR92L/NE(16-g)	B	N		

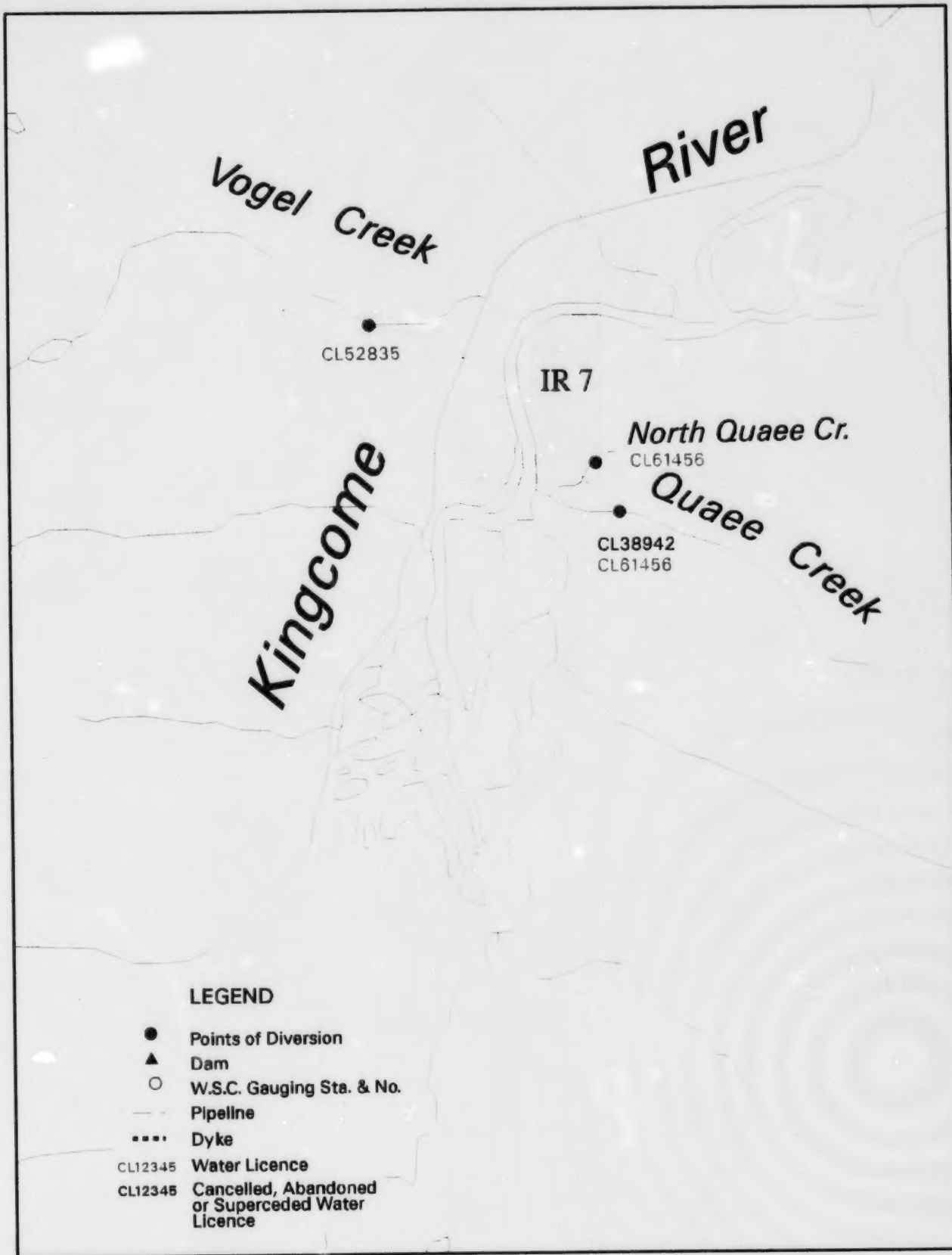
---------- Total of 1 Licence Reported ----------

Stream Register Report Water Licence Information System

Report Requested By : DJOLLY
Date Report Requested : 1996/07/22 11:10
Report Sorted By : Source Gazetted - Priority Date - Licence Number
Selection Criteria
START POINT : PD31497 - 92L/NE(16-g) C
END POINT : SO493 - Vogel Creek right of Kingcome River

Priority YYYY/MM/DD	Licence Number	File Number	Appurtenancy	Licensee	PUC	Quantity/Units	Term Start	Term End	Licence Comments	Process Status
1979/03/23	C052835	0365349	POWERHOUSE SITE SITUATED ON L 1952 R 1 COAST DIST	TSAWATAINEUK INDIAN BAND 978-636-7102 GD KINGCOME INLET BC V0N2B0	FRCOM	3.53 CS	Jan 01	Dec 31		
	Source		WR Map	POD RED POD Comments					Prec	
	Vogel Creek		WR92L/NE(16-g)	C N					17D HAN - COAST	

---------- Total of 1 Licence Reported ----------



TSAWATAINEUK FIRST NATION

Scale: 1 : 50,000

Ministry of Environment, Lands & Parks | Date: February 2000 | Environment & Lands Division